

# Appendices



# Charter of Rights on AIDS and HIV

The *Charter of Rights on AIDS and HIV* was drafted in 1991 and developed in 1992 through a process of wide consultation. In November 1992, it was launched at a conference of over 300 people, and supported by many organisations and individuals. These included political and religious leaders, artists, community organisations and international leaders.

The HIV/AIDS Charter is the 'Bill of Rights' of people living with HIV or AIDS. The human rights principles in the Charter are essential to ensure non-discrimination and public health in South Africa.

*You can use the Charter:*

- To claim your rights as a person living with HIV or AIDS.
- To help other people understand their rights around HIV and AIDS.



## PREAMBLE

In the light of

- the existing discrimination against persons with AIDS or HIV and their partners, families and care-givers
- the danger that the growth of the epidemic in South Africa will lead to an increase in unfair and irrational treatment of those affected by AIDS and HIV
- the desirability of greater awareness and knowledge of AIDS and HIV among all South Africans, and
- the need for concerted action by all South Africans to stop the spread of HIV,

this Charter sets out those basic rights which all citizens enjoy or should enjoy and which should not be denied to persons affected by HIV or AIDS as well as certain duties.

### 1

## LIBERTY, AUTONOMY, SECURITY OF THE PERSON AND FREEDOM OF MOVEMENT

- I.1 Persons with HIV or AIDS have the same rights to liberty and autonomy, security of the person and to freedom of movement as the rest of the population.
- I.2 No restriction should be placed on the free movement of persons within and between states on the ground of HIV or AIDS.

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- 1.3 Segregation, isolation or quarantine of persons in prisons, schools, hospitals or elsewhere merely on the ground of AIDS or HIV is unacceptable.
  - 1.4 Persons with HIV or AIDS are entitled to autonomy in decisions regarding marriage and child-bearing although counselling about the consequences of their decisions should be provided.

## 2

### **CONFIDENTIALITY AND PRIVACY**

- 2.1 Persons with HIV or AIDS have the right to confidentiality and privacy concerning their health and HIV status.
- 2.2 Information regarding a person's HIV status must not be disclosed without that person's consent, and, after death, except when required by law, without the consent of his or her family or partner, except in cases of clear threat to and disregard of an identifiable individual's life interests.

## 3

### **TESTING**

- 3.1 HIV antibody testing must occur with free and informed consent, except in the case of unlinked, anonymous epidemiological screening programmes.
- 3.2 Anonymous and confidential HIV antibody testing with pre-and post-test counselling should be available to all.
- 3.3 Persons who test HIV positive should have access to continuing support and health services.

## 4

### **EDUCATION ON AIDS AND HIV**

- 4.1 All persons have the right to proper education and full information about HIV and AIDS, as well as the right to full access to and information about prevention methods.
- 4.2 Public education with the specific objective of eliminating discrimination against persons with HIV or AIDS should be provided.

## 5

### **EMPLOYMENT**

- 5.1 HIV should not be a basis for pre-employment testing or a ground for refusing to employ any person.
- 5.2 HIV or AIDS do not, by themselves, justify termination of employment or demotion, transfer or discrimination in employment.
- 5.3 The mere fact that an employee is HIV positive or has AIDS does not have to be disclosed to the employer.
- 5.4 There is no warrant for requiring existing employees to undergo testing for HIV.

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- 5.5 Information and education on HIV and AIDS, as well as access to counselling and referral, should be provided in the workplace after appropriate consultation with representative employee groups.

## **6**

### **HEALTH AND SUPPORT SERVICES**

- 6.1 Persons with HIV or AIDS have rights to housing, food, social security, medical assistance and welfare equal to all members of our society.
- 6.2 Reasonable accommodation in public services and facilities should be provided for those affected by HIV or AIDS.
- 6.3 The source of a person's infection should not be a ground for discrimination in the provision of health services, facilities or medication.
- 6.4 HIV or AIDS should not provide the basis for discrimination by medical aid funds and services.

## **7**

### **MEDIA**

- 7.1 Persons with HIV or AIDS have the right to fair treatment by the media and to observance of their rights to privacy and confidentiality.
- 7.2 The public has the right to informed and balanced coverage of, and the presentation of information and education on, HIV and AIDS.

## **8**

### **INSURANCE**

Persons with HIV or AIDS and those suspected to be 'at risk' of having HIV or AIDS should be protected from arbitrary discrimination in insurance.

## **9**

### **GENDER AND SEXUAL PARTNERS**

- 9.1 All persons have the right to insist that they or their sexual partners take appropriate precautionary measures to prevent transmission of HIV.
- 9.2 The specially vulnerable position of women in this regard should be recognised and addressed, as should the specially vulnerable position of youth and children.

## **10**

### **PRISONERS**

- 10.1 Prisoners with HIV should enjoy standards of care and treatment equal to those of other prisoners.
- 10.2 Prisoners with AIDS should have access to special care which is equivalent to that enjoyed by other prisoners with serious illness.
- 10.3 Prisoners should have the same access to education, information and preventive measures as the general population.

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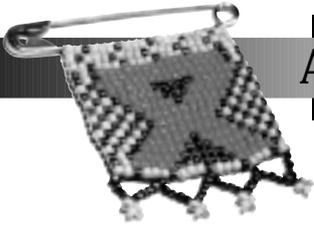
## **EQUAL PROTECTION OF THE LAW AND ACCESS TO PUBLIC BENEFITS**

- II.1 Persons with AIDS or HIV should have equal access to public benefits and opportunities, and HIV testing should not be required as a precondition for eligibility to such advantages.
- II.2 Public measures should be adopted to protect people with HIV or AIDS from discrimination in employment, housing, education, child care, and custody and the provision of medical, social and welfare services.

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## **DUTIES OF PERSONS WITH HIV OR AIDS**

Persons with HIV or AIDS have the duty to respect the rights, health and physical integrity of others, and to take appropriate steps to ensure this where necessary. ”



The Minister of Health launched the *National Patients' Rights Charter* in 1999. It is a very important guide for all people using health services about their rights, responsibilities and duties. It aims to empower patients and help with the improvement of national health services. While it is not a legally binding document, many of the rights that it refers to are protected by our Constitution and other laws.

*You can use the Charter:*

- To claim your rights as a person using health care services.
- To help other people understand their rights and duties around health services.



## INTRODUCTION

For many decades the vast majority of the South African population has experienced either a denial or violation of fundamental human rights, including rights to health care services. To ensure the realisation of the right of access to health care services as guaranteed in the *Constitution of the Republic of South Africa* (Act No 108 of 1996), the Department of Health is committed to upholding, promoting and protecting this right and therefore proclaims this Patients' Rights Charter as a common standard for achieving the realisation of this right.

This Charter is subject to the provisions of any law operating within the Republic of South Africa and to the financial means of the country.

## A HEALTHY AND SAFE ENVIRONMENT



Everyone has the right to a healthy and safe environment that will ensure their physical and mental health or well-being, including adequate water supply, sanitation and waste disposal as well as protection from all forms of environmental danger, such as pollution, ecological degradation or infection.

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## **PARTICIPATION IN DECISION-MAKING**

Every citizen has the right to participate in the development of health policies and everyone has the right to participate in decision-making on matters affecting one's health.



## **ACCESS TO HEALTH CARE**

Everyone has the right of access to health care services that include:

- receiving timely emergency care at any health care facility that is open regardless of one's ability to pay
- treatment and rehabilitation that must be made known to the patient to enable the patient to understand such treatment or rehabilitation and the consequences thereof
- provision for special needs in the case of newborn infants, children, pregnant women, the aged, disabled persons, patients in pain, person living with HIV or AIDS patients
- counselling without discrimination, coercion or violence on matters such as reproductive health, cancer or HIV/AIDS
- palliative care that is affordable and effective in cases of incurable or terminal illness
- a positive disposition displayed by health care providers that demonstrate courtesy, human dignity, patience, empathy and tolerance
- health information that includes the availability of health services and how best to use such services; and such information shall be in the language understood by the patient.



## **KNOWLEDGE OF ONE'S HEALTH INSURANCE OR MEDICAL AID SCHEME**



A member of a health insurance or medical aid scheme is entitled to information about that insurance or medical aid scheme and to challenge, where necessary, the decisions of such health insurance or medical aid scheme relating to the member.

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## **CHOICE OF HEALTH SERVICES**

Everyone has the right to choose a particular health care provider for services or a particular health facility for treatment provided that such choice shall not be contrary to the ethical standards applicable to such health care providers or facilities, and the choice of facilities in line with prescribed service delivery guidelines.



## **BE TREATED BY A NAMED HEALTH CARE PROVIDER**

Everyone has the right to know the person that is providing health care and therefore must be attended to by clearly identified health care providers.



## **CONFIDENTIALITY AND PRIVACY**

Information concerning one's health, including information concerning treatment may only be disclosed with informed consent, except when required in terms of any law or an order of the court.



## **INFORMED CONSENT**

Everyone has the right to be given full and accurate information about the nature of one's illnesses, diagnostic procedures, the proposed treatment and the costs involved, for one to make a decision that affects anyone of these elements.



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## **REFUSAL OF TREATMENT**

A person may refuse treatment and such refusal shall be verbal or in writing provided that such refusal does not endanger the health of others.



## **BE REFERRED FOR A SECOND OPINION**

Everyone has the right to be referred for a second opinion on request to a health provider of one's choice.



## **CONTINUITY OF CARE**

No one shall be abandoned by a health care professional worker or a health facility which initially took responsibility for one's health.



## **COMPLAIN ABOUT HEALTH SERVICES**

Everyone has the right to complain about health care services and to have such complaints investigated and to receive a full response on such investigation.





## **RESPONSIBILITIES OF THE PATIENT**

Every patient or client has the following responsibilities:

- to advise the health care providers on his or her wishes with regard to his or her death.
- to comply with the prescribed treatment or rehabilitation procedures.
- to enquire about the related costs of treatment and/or rehabilitation and to arrange for payment.
- to take care of health records in his or her possession.
- to take care of his or her health.
- to care for and protect the environment.
- to respect the rights of other patients and health providers.
- to utilise the health care system properly and not abuse it.
- to know his or her local health services and what they offer.
- to provide health care providers with relevant and accurate information for diagnostic, treatment, rehabilitation or counselling purposes. ”

## National Policy on Testing for HIV

The Department of Health published the *National Policy on Testing for HIV* in August 2000. It is a guideline on how and when HIV testing should take place. It should guide all health care workers about their duties, and people thinking about HIV testing about their rights. You should read the National Policy with other guidelines such as the *Health Professions Council Guidelines: The Management of Patients with HIV Infection or AIDS* (see A4 on page 504).

Some parts of the National Policy are already law, eg rules on HIV testing with informed consent.

*You can use the National Policy:*

- To understand your rights as a person thinking about being tested.
- To help other people understand their rights around testing.



### Background

Testing for HIV infection presents serious medical, legal, ethical, economic and psychological implications in the health care setting. Because HIV infection is a life-threatening condition, reasonable persons and health care workers will attach significance to the outcome of an HIV test, especially a positive diagnosis. For these reasons, and in accordance with the constitutional guarantees of freedom and security of the person, and the right to privacy and dignity, the following HIV testing policy shall constitute national policy. This policy applies to persons who are able to give consent, as well as to those legally entitled to give proxy consent to HIV testing in terms of the law.

## GUIDELINES

1

### ***Circumstances under which HIV testing may be conducted***

- I.1 Testing for human immuno-deficiency (HIV) virus may be done only in the following circumstances:
  - Upon individual request, for diagnostic and treatment purposes, with the informed consent of that individual.
  - On the recommendation of a medical doctor that such testing is clinically indicated, with the informed consent of the individual.
  - As part of HIV testing for research purposes, with the informed consent of the individual and in accordance with national legal and ethical provisions regarding research.
  - As part of screening blood donations, with the informed consent of the individual and in accordance with statutory provisions regarding blood donations.

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- As part of unlinked and anonymous testing for epidemiological purposes undertaken by the national, provincial or local health authority or an agency authorised by any of these bodies, without informed consent, provided that HIV testing for epidemiological purposes is carried out in accordance with national legal and ethical provisions regarding such testing.
  - Where an existing blood sample is available, and an emergency situation necessitates testing the source patient's blood (e.g. when a health care worker has sustained a risk-bearing accident such as a needle-stick injury), HIV testing may be undertaken without informed consent but only after informing the source patient that the test will be performed, and providing for the protection of privacy. The information regarding the result may be disclosed to the health care worker concerned but must otherwise remain confidential and may only be disclosed to the source patient with his or her informed consent.
  - Where statutory provision or other legal authorisation exists for testing without informed consent.
- I.2 Routine testing of a person for HIV infection for the perceived purpose of protecting a health care worker from infection is impermissible regardless of consent.
  - I.3 HIV testing for an employee in the workplace is prohibited unless justified by an order of the Labour Court, in accordance with the Employment Equity Act No. 55 of 1998, section 7 (2).
  - I.4 Proxy consent may be given where the individual is unable to give consent.

## 2

### ***Informed consent, pre-test counselling and post-test counselling***

- 2.1 Testing for HIV infection at all health care facilities will be carried out with informed consent, which includes pre-testing counselling. The information regarding the result of the test must remain fully confidential, and may be disclosed in the absence of an overriding legal or ethical duty only with the individual's fully informed consent.
- 2.2 In the context of HIV/AIDS, testing with informed consent means that the individual has been made aware of, and understands the implications of the test.
- 2.3 Consent in this context means the giving of express agreement to HIV testing in a situation devoid of coercion, in which the individual should feel equally free to grant or withhold consent. Written consent should be obtained where possible.
- 2.4 Pre-test counselling should occur before an HIV test is undertaken. It should be a confidential dialogue with a suitably qualified person, such as a doctor, nurse or trained HIV counsellor, undertaken as a means of passing on information and gaining consent.

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- 2.5 Posters, pamphlets and other media (including videos) may be used in making information on HIV/AIDS available, but cannot be regarded as a general substitute for pre-test counselling.
  - 2.6 A doctor, nurse or trained HIV counsellor should accept, after personal consultation, an individual's decision to refuse pre-test counselling and HIV testing. Psychological competence in understanding and dealing with the diagnosis of a life-threatening condition, rather than educational or social status, should be the yardstick for this decision. Such a decision should only be made on a case-by-case basis and should be recorded in writing.
  - 2.7 A doctor, nurse or trained HIV counsellor should also ensure that post-test counselling takes place as part of a process of informing an individual of an HIV test result.
  - 2.8 Where a health care facility lacks the capacity to provide a pre-test or post-test counselling service, a referral to a counselling agency or another facility with the capacity to provide counselling should be arranged before an HIV test is performed, and when an HIV test is given.
  - 2.9 Where a patient presents with recognisable HIV/AIDS specific symptoms but no facilities exist for pre-test counselling, then treatment for the specific symptom or illness should proceed without an HIV test. Referral for pre-test counselling with a view to a possible HIV test must occur at the earliest opportunity.

### 3

### ***Interpretation of policy***

In all instances, this policy shall be interpreted to ensure respect for rights to privacy, dignity and autonomy.

### 4

### ***Definitions***

- 4.1 **AIDS**

Acquired Immune-Deficiency Syndrome (AIDS) is the late and most severe stage of HIV disease and is characterised by signs and symptoms of severe immuno-deficiency, where the body loses the ability to fight against infections because the immune system is weakened.
- 4.2 **Epidemiological purposes**

Epidemiology is the study of the distribution of diseases in society, and the application of this information for the prevention and control of disease. HIV testing for epidemiological purposes is therefore HIV testing in order to obtain information regarding the distribution of HIV infection within society.
- 4.3 **HIV**

The Human Immuno-Deficiency Virus (HIV) is the virus that causes AIDS.

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#### 4.4 HIV testing

HIV testing is any form of medical testing to determine the HIV status of a person.

#### 4.5 Informed consent

Informed consent to an HIV test means that the individual understands and agrees to an HIV test. Informed consent implies that the individual understands what the test is, why it is necessary and the benefits, risks, alternatives and possible social implications of the outcome.

#### 4.6 Post-test counselling

Post-test counselling is the counselling provided when an individual receives his or her HIV test result. Post-test counselling involves one or more sessions (ideally at least two) and should include discussions on:

- feedback and understanding of results
- if the result is negative: strategies for risk reduction and possibility of infection in the 'window period'
- if the result is positive:
  - immediate emotional reaction and concerns
  - personal, family and social implications
  - difficulties a client may foresee and possible coping strategies
  - who the client wants to share the results with
  - immediate needs and social support identification
  - follow-up supportive counselling and follow-up medical care.

#### 4.7 Pre-test counselling

Pre-test counselling is that counselling given to an individual before an HIV test, to make sure that the individual has sufficient information to make an informed decision about having an HIV test. Pre-test counselling should include discussions on:

- what an HIV test is, the purpose of the test
- the meaning of a positive result, including the practical implications such as medical treatment and care, sexual relations, psycho-social implications, work, etc.
- assessment of personal risk of HIV infection
- safer sex and strategies to reduce risk
- coping with an HIV positive test result, including who to tell and identifying needs and support services
- an opportunity for decision making about taking the HIV test.

#### 4.8 Proxy consent

Proxy consent is consent by a person legally entitled to grant consent on behalf of another individual. For example, a parent or guardian of a child below the age of consent to medical treatment may give proxy consent to HIV testing of the child.



## Health Professions Council Guidelines: The Management of Patients with HIV Infection or AIDS

The *Health Professions Council of South Africa (HPCSA) Guidelines of 2001* replaced the *South African Medical and Dental Council (SAMDC) Guidelines of 1994*.

You can use the *Guidelines*:

- To claim your rights when interacting with health professionals.
- To help other people understand their rights when dealing with health professionals.



### PREAMBLE

HIV infection and AIDS have emerged as the most challenging health matter of modern times. The pandemic has created not only medical, but also ethical, legal, social, political and fiscal issues.

The original version of the policy guidelines pertaining to the management of patients with HIV Infection or Aids has been amended substantially on the basis of inputs received from a wide range of stakeholders in the field of HIV/AIDS both locally and internationally.

It should, however, be realised that the matter concerning HIV/AIDS is a highly sensitive and quite often a controversial issue to address. It is therefore not surprising that the inputs received for the revision of the guidelines were not always wholly uniform and it was therefore necessary to follow an approach of compromise in selecting the most appropriate and suitable inputs for inclusion in the guidelines at hand.

The guidelines are now much in keeping with international best practice and reflect to a large extent, if not fully, the views of organisations such as the United Nations Joint Programme on HIV/AIDS (UNAIDS) and that of the World Health Organisation (WHO).

### PREMISES

#### ***HIV infection and AIDS***

Although infection with HIV and of AIDS is incurable at present, AIDS is considered a manageable life-threatening disease.

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## ***Modes of transmission***

HIV is transmitted primarily in 3 ways:

- Sexual (usually heterosexual)
- Perinatal
- Blood-borne (eg sharing of injection equipment).

It has therefore become impossible and unjustifiable to identify and focus on “high risk groups or individuals”.

## ***Occupational transmission of HIV***

The risk of transmission of HIV infection in the health care area from patient to patient, patient to health care worker, and from health care worker to patient, through inoculation of infected blood or other body fluids has been shown scientifically to be very small. Fears, which are not always based on reality, have thus tended to exaggerate the risks out of all proportion.

The health care workers and patients are exposed not only to HIV. It should be recognised that at present infection by hepatitis B virus poses a far greater risk. Universal precautions against blood-borne infections should therefore be adhered to in all health care encounters to minimise exposure of health care workers and their patients.

Post-exposure treatment of health care workers in whom inoculation or significant contamination might have occurred, may be beneficial and should be considered in consultation with the Infection Control Medical Officer of the institution, or other designated person. When there has been a risk of contamination, PEP should also be strongly recommended and the health care worker should receive through counselling about the possible benefits of PEP in reducing the risk of sero-conversion.

## ***Responsibilities of health care workers***

In the management of the HIV positive patient, the health care worker has a primary responsibility towards the individual patient. The health care worker also has certain responsibilities towards other health care workers and other parties that might be in danger of contracting the disease from the patient.

No health care worker may ethically refuse to treat any patient solely on the grounds that the patient is, or may be, HIV seropositive. Nor may a doctor withhold normal standards of treatment from any patient solely on the grounds that the patient is seropositive, unless such variation of treatment is determined to be in the patient’s interest. Treatment should not be suboptimal because of a perceived potential risk to the health care workers. It is accepted that a health care worker will examine or treat a patient only with the informed consent of the patient.

Health care professionals are being reminded that an HIV diagnosis, without further examination (such as measuring viral load or CD4 cell counts), provides no information about a person’s prognosis or actual state of health. Unilateral decisions not to resuscitate people with HIV

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are a violation of fundamental rights and may lead to disciplinary action being taken against a health care professional who makes himself/herself guilty of such action.

### ***Confidentiality***

There is no persuasive evidence that knowledge of a patient's HIV status diminishes the incidence of exposure-incidents. In fact, our law has recognised the important public health benefits of maintaining patient confidentiality regarding HIV status, in order to encourage patients with HIV to be tested and treated.

### ***HIV testing***

HIV Testing should only take place with the voluntary, informed consent of the individual. In accordance with the guidelines set out below. Requirements of routine or universal testing of patients in the health care setting are unjustifiable and undesirable. However, patients may be requested to consider HIV testing when certain well-defined high risk procedures are to be undertaken; these are set out below.

The attention of patients should be drawn to the potential abuse of HIV test kits that are nowadays available on the market. Any person who wish to use such kits should ascertain from his or her doctor or another credible source whether such kits are reliable and safe. New forms of HIV testing should only be adopted if it conforms with the guidelines set out in this policy document.

### ***Limiting the spread of HIV***

The medical fraternity supports all efforts to keep the spread of HIV infection in the community as low as possible. Such measures include appropriate education regarding the infection, alteration of lifestyle, improved management of predisposing and aggravating factors including other sexually transmitted diseases, mobilising support from the community, and disseminating information regarding preventive measures. Since the guidelines were first published, there have been very significant advances in the treatment of opportunistic infections and in the use of anti-retroviral drugs. The medical fraternity is committed thereto that patients suffering from whatever disease will have improved access to medical care and treatment.

### ***Education***

Education and training are essential components of the successful implementation of universal precautions, i.e. those precautions which should be universally applied to prevent transmission of HIV and other diseases in the health care setting. These precautions have proven to be the most effective measures to protect health care workers. These, and all other measures instituted to prevent the transmission of infections in the health care setting will however probably fail if they are not supported by an ongoing educational programme.

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To be effective, such educational schemes should be:

- Structured and preferably assessed by formal examinations;
- Ongoing throughout the period of employment; and
- Continuously evaluated and monitored.

### ***Employers, compensation and insurance***

Health care workers who are employed, may take irrational and scientifically unjustifiable steps to minimise the perceived risk of acquiring HIV infection from patients, if there is a notion that their employers are unconcerned and not willing to minimise the risk of occupational infection of health care workers.

### ***Obligations of employing authorities***

An employer should have a clear-cut policy statement that declares the responsibility of the employer towards his employees who become infected whilst performing official duties.

This policy should state the procedures the employee should follow after occupational exposure, which should include guidelines with regard to the reporting of the incident for purposes of compensation, the HIV testing of the health care worker and, where informed consent can be obtained, of the source patient and on access to post-exposure prophylaxis.

Employers should ensure that all employees are insured against the consequences of such infections. This insurance may be under *The Workmen's Compensation Act*, and/or by a private insurance scheme. Although HIV/AIDS is not a listed occupational disease in terms of the *Workmen's Compensation Act*, an employee who can show that he or she was infected as a result of an exposure during the course of carrying out his or her occupational duties, may claim compensation.

Medical students, who are not legally recognised employees, should also be insured, either by their university or by the hospital where they undergo their practical training, against such incidents.

There is consensus that adherence to universal precautions is the most important, and possibly the only, action that will significantly protect health care workers against infection by HIV and other blood-borne pathogens. (The exception is immunisation against hepatitis B.)

Therefore:

1. All employers must make available to health care workers facilities to institute universal precautions.
2. Such facilities should be provided to the full spectrum of health care workers and should include those paramedical personnel who initially come into contact with the patient, as well as auxiliary and unskilled workers who handle the patients, or could be exposed to contaminated materials. Such facilities should also be available to medical students, who are, because they are technically inexperienced, and not recognised as official employees, particularly vulnerable.

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3. The facilities available should include the additional sophisticated precautionary measures which may have to be instituted to protect the professional personnel performing invasive procedures known to be associated with a high risk of inoculation with patients' blood.

### ***Knowledge of the HIV status of patients***

There is persuasive scientific evidence that knowledge of the HIV status of a patient does not provide additional protection to the doctor or other health care worker treating the patient. Nevertheless, there is a perception amongst some doctors that under exceptional circumstances the knowledge of the HIV status of a patient may be useful in order to ensure the use of 'extended' universal precautionary measures such as special gloves, clothing and face masks; and that inexperienced personnel should not be allowed to perform the surgery. It is argued that selective use of such expensive measures will be cost-effective. Exceptional circumstances are defined as palpation of a needle-tip in a body cavity, or the simultaneous presence of the health care worker's fingers and needle or other sharp object or instrument in a poorly visualised or highly confined anatomic cavity. Orthopaedic and other procedures where there is an aerosol of blood, bone fragments or bloody fluids, also qualify.

Where certain well-defined high risk or exposure-prone procedures are contemplated, the patient should be informed of the concerns and asked to consent to HIV testing. It should be emphasised that the condoning of pre-operative or pre-treatment HIV testing when high-risk procedures are contemplated, should not be abused to justify routine HIV testing of all patients, nor should patients be told that pre-HIV testing is mandatory in such circumstances. All patients have a right to refuse testing, and where a patient refuses to test for HIV under such circumstances, the patient may not be refused treatment on this basis. However should a patient decline to be tested for HIV, such patient should be managed by health care professionals as if he or she was HIV positive.

Health care workers should realise that there are factors which make it unrealistic to rely on HIV testing of patients to protect themselves against occupational exposure. Thus, health care workers must appreciate the significance of the window period of infectivity; the ever-increasing prevalence of HIV infection especially among hospital patients; the time it takes to obtain a reliable HIV test result; and the need to treat, under less than ideal conditions, patients outside hospitals and in emergency care units.

These factors are not under the control of the health care worker and strengthen the view that to minimise the risk of infection, health care workers should adopt appropriate universal precautions in all clinical situations rather than rely on knowledge of the HIV status of patients.

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## ***Testing patients for HIV-antibodies***

### **INFORMED CONSENT**

A patient should be tested for HIV-infection only if he or she gives informed consent. Such informed consent is made up of the following important elements:

#### **INFORMATION**

The patient should be given information regarding the purpose of the laboratory test; what advantages or disadvantages testing may hold for him or her as patient; why the surgeon or physician wants this information; what influence the result of such a test will have on his or her treatment; and how his or her medical protocol will be altered by this information. The psychosocial impact of a positive test result should also be addressed.

All such communication should be conducted in language that is easily understood by the patient.

#### **UNDERSTANDING**

Furthermore, the patient should clearly understand the information provided, so that he or she may agree to the HIV test based on such understanding. The importance of the patient's ability to understand the information given means that if posters are displayed in an attempt to inform patients that testing for HIV may be undertaken, these must be supplemented by a verbal pre-test counselling of the patient by the doctor in order to appropriately obtain the patient's informed consent.

The principle of informed consent entails that the health care worker accepts that if the patient were HIV-positive, appropriate counselling will follow. The health care worker must therefore ensure that the patient is directed to appropriate facilities that will oversee his or her further care and, if possible, counsel his or her family and/or sexual partners.

#### **REFUSAL TO HAVE BLOOD TESTED FOR HIV ANTIBODIES**

It is justifiable to test for HIV without the patient's consent, but only in the circumstances set out in the National Policy on Testing for HIV:

- As part of unlinked and anonymous testing for epidemiological purposes undertaken by the national, provincial or local health authority or an agency authorised by any of these bodies, provided that HIV testing for epidemiological purposes is carried out in accordance with national legal and ethical provisions regarding such testing;
- Where statutory provision or other legal authorisation exists for testing without informed consent; or
- In emergency situations where infection is suspected and it is impossible to obtain consent, subject to conditions (a) below.

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An emergency situation in terms of a patient is generally considered to be a situation where a patient's health is in serious danger, and immediate treatment is necessary. In terms of HIV testing, it is generally argued that there are few, if any, situations where in order to provide for the immediate care of a patient who is unable to consent, it would be necessary to determine the patient's HIV status.

In terms of a health care worker, where a health care worker has sustained a risk bearing incident such as a needlestick injury, this may be determined to be an emergency situation.

In view of the fact that immediate post-exposure measures may be beneficial to the health care worker, information as to the HIV status of the source patient may be obtained in the following ways:

- (a) Testing any existing blood specimen. This should be done with the source patient's consent but if consent is withheld the specimen may nevertheless be tested, but only after informing the source patient that the test will be performed, and providing for the protection of privacy. The information regarding the result may be disclosed to the health care worker but must otherwise remain confidential and may only be disclosed to the source patient with his or her informed consent.
- (b) If the patient is unable to give informed consent, and is likely to remain unable for a significant length of time in relation to the prophylactic needs of the health care worker or other patients, then every reasonable attempt should be made to obtain appropriate vicarious consent. Vicarious consent means the consent of the patient's closest relative or, in the case of a minor, the consent of the medical superintendent in the absence of a parent or other guardian.

### ***The doctor's duty towards HIV positive patients***

No doctor may ethically refuse to treat any patient solely on the grounds that the patient is, or may be, HIV seropositive.

No doctor may withhold normal standards of treatment from any patient solely on the grounds that the patient is HIV seropositive, unless such variation of treatment is determined to be in the patient's interest and not by perceived potential risk to the health care worker.

### ***Confidentiality***

The results of HIV positive patients should be treated at the highest possible level of confidentiality.

Our courts have recognised that confidentiality regarding HIV status extends to other medical colleagues and health care workers, and other health care workers may not be informed of a patient's HIV status without that patient's consent. The need for transmission of clinical data to those medical colleagues and health care workers directly involved, with the care of the patient, should be discussed with the patient, in order to obtain his or her consent for disclosures considered to be in the patient's best interest in terms of treatment and care.

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The principle of confidentiality applies in respect of the patient. The decision whether to divulge the information to other parties involved must therefore be in consultation with the patient. Where if the patient's consent cannot be obtained, ethical guidelines recommend that the health care worker should use his or her discretion whether or not to divulge the information to other parties involved who are at clear risk of danger. To date, we have not had legal clarity regarding whether this situation is an acceptable limitation of the right to confidentiality. Therefore such a decision must be made with the greatest care, after explanation to the patient and with acceptance of full responsibility at all times. The following steps are recommended:

- Counselling the patient on the importance of disclosing to his or her sexual partner and for taking other measures to prevent HIV transmission;
- Providing support to the patient to make this disclosure;
- Where the patient still refuses to disclose his or her HIV status or refuse to consider other measures to prevent infection, counselling the patient on the health care workers's ethical obligation to disclose such information and requesting consent to do so; and finally;
- Disclosing such information.

When informing the patient about the importance of disclosure, the attention of the patient should be drawn to the possibility of violence and other adverse consequences that such disclosure may hold in store for the patient concerned.

The report of HIV test results by a laboratory, as is the case with all laboratory test results, should be considered confidential information. Breach of confidentiality is, however, more likely to occur in the ward, hospital or doctor's reception area than in the laboratory. It is therefore essential that health care institutions, pathologists and doctors formulate a clear policy as to how such laboratory results will be communicated and how confidentiality of the results will be maintained.

### ***Doctors infected with HIV***

No doctor or health care worker is obliged to disclose his or her HIV status to an employer nor may any employee be unfairly discriminated against, or dismissed as a result of HIV status.

The benefits of voluntary HIV testing should be explained to all health care workers and they should be encouraged to consider HIV testing. Any doctor or health care worker who finds him or herself to be HIV positive should be encouraged to seek counselling from an appropriate professional source, preferably one designated for this purpose by a medical academic institution. Counsellors must of course be familiar with recommendations such as those of the Centres for Disease Control so that unnecessary, onerous, and scientifically unjustifiable restrictions are not placed on the professional activities of an HIV positive doctor.

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Infected doctors may continue to practise. They must however seek and implement the counsellor's advice on the extent to which they should limit or adjust their professional practice in order to protect their patients.

## **ADDENDUM**

### ***Basic elements of practically applicable universal precautions***

These precautions are designed to prevent:

- Penetration of skin by contaminated sharp objects.
- Contamination of skin, especially non-intact skin, and mucous membranes, especially the conjunctivae.

As a general principle, disposable instruments should only be used once, and re-usable items should be sterilized.

- I. Body fluids which should be handled with the same precautions as blood
  - a. Cerebrospinal fluid  
Peritoneal fluid  
Pleural fluid  
Pericardial fluid  
Synovial fluid  
Amniotic fluid  
Semen  
Vaginal secretions  
Breast milk
  - b. Any other body fluid which is blood stained.
  - c. Saliva in association with dentistry.
  - d. Unfixed tissues and organs.
2. Body fluids such as urine, sweat and saliva (except in the context of dentistry) do not pose any risk.
3. Avoidance of injuries with 'sharps'
  - a. Recognise risky objects, not only needles and knives, but less obvious ones such as towel-clips, suction drain introducers, bone spicules, etc.
  - b. Never allow a sharp object, especially a contaminated one, to come near one's fingers. (Do not resheath needles, use instruments to load and unload scalpel blades, etc.)
  - c. Be personally responsible for the immediate safe disposal of all 'sharps' that one uses into an approved container.
  - d. Never handle a 'sharp' without looking at it.
  - e. Never put down a 'sharp' except in an agreed neutral area.

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- f. Use the safest 'sharp' that will do the job; knives and sharp needles only for skin, scissors and blunt (round-nosed) needles for tissues.
  - g. Never feel for a needle point (or other sharp object) with fingers.
  - h. Never put one's fingers in an area or wound where someone else is using a 'sharp'.
  - i. Avoid use of wire sutures.
  - j. Use heavy-duty gloves (ring-link or similar) in danger situations (broken bones, sharp foreign bodies).

4. Avoidance of skin/mucous membranes contamination

Three risks are identified:

- Blood or body fluid on hands.
  - Spillage on the health care worker's body.
  - Spray-aerosol to eyes and face.
- a. Never have contact with patients, soiled linen, etc. if skin of hands is not intact (cuts, eczema, etc.) unless the lesions can be completely isolated by impermeable adhesive tape.
  - b. Use gloves:
    - Latex gloves to be used by every health care worker handling blood/body fluid.
    - Torn glove to be removed immediately, and contamination washed away.
    - Double gloving reduces skin contamination during operations by 80%, and may reduce the risk associated with 'sharps' injuries.
  - c. Spillage:
    - Where risk of spillage exists, use plastic aprons and impermeable boots.
    - Ensure that all spillage is immediately cleaned.
    - Double seal all containers of blood and body fluid.
  - d. Spray/aerosol:

Where risk exists use face/eye protection (face shields, eye-goggles).  
Laser and fulguration smoke should be continuously aspirated by suction.

Routine implementation of these simple, logical measures, which are not time-consuming nor significantly expensive, by all members of the health care team, should reduce the risk of infection of health care workers by patients, and of patients by health care workers, to very nearly zero. Disciplined implementation of these precautions in dealing with all patients should make pre-treatment determination of a patient's HIV status irrelevant in terms of the safety of health care workers.



# Code of Good Practice on Key Aspects of HIV/AIDS and Employment

The Minister of Labour launched the *Code of Good Practice on Key Aspects of HIV/AIDS and Employment* on 1 December 2000. It is published under the *Labour Relations Act* and the *Employment Equity Act*. The Code is a guide for employers and employees. It is not legally binding on all employers and its adoption in the workplace is voluntary.

However, parts of the Code are already law, eg the sections of the Code dealing with non-discrimination, pre-employment testing and confidentiality.

*You can use the Code:*

- To discuss issues around HIV/AIDS in the workplace.
- To campaign for the implementation of the Code in the workplace.



## 1

### INTRODUCTION

- I.1 The Human Immunodeficiency Virus (HIV) and the Acquired Immune Deficiency Syndrome (AIDS) are serious public health problems which have socio economic, employment and human rights implications.
- I.2 It is recognised that the HIV/AIDS epidemic will affect every workplace with prolonged staff illness, absenteeism, and death impacting on productivity, employee benefits, occupational health and safety, production costs and workplace morale.
- I.3 HIV knows no social, gender, age or racial boundaries, but it is accepted that socio-economic circumstances do influence disease patterns. HIV thrives in an environment of poverty, rapid urbanisation, violence and destabilisation. Transmission is exacerbated by disparities in resources and patterns of migration from rural to urban areas. Women, particularly are more vulnerable to infection in cultures and economic circumstances where they have little control over their lives.
- I.4 Furthermore HIV/AIDS is still a disease surrounded by ignorance, prejudice, discrimination and stigma. In the workplace unfair discrimination against people living with HIV and AIDS has been perpetuated through practices such as pre-employment HIV testing, dismissals for being HIV positive and the denial of employee benefits.

*The Code will be accompanied by Technical Assistance Guidelines on Managing HIV/AIDS in the workplace. It is envisaged that these will be developed in the second half of 2000 and published during 2001. The guidelines will provide more detail on the implementation of potential policies and programmes to address these impacts, including strategies to accommodate the needs of small businesses and the informal sector.*

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- 1.5 One of the most effective ways of reducing and managing the impact of HIV/AIDS in the workplace is through the implementation of an HIV/AIDS policy and programme. Addressing aspects of HIV/AIDS in the workplace will enable employers, trade unions and government to actively contribute towards local, national and international efforts to prevent and control HIV/AIDS. In light of this, the Code has been developed as a guide to employers, trade unions and employees.
- 1.6 Furthermore the Code seeks to assist with the attainment of the broader goals of:
- Eliminating unfair discrimination in the workplace based on HIV status.
  - Promoting a non-discriminatory workplace in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection.
  - Promoting appropriate and effective ways of managing HIV in the workplace.
  - Creating a balance between the rights and responsibilities of all parties.
  - Giving effect to the regional obligations of the Republic as a member of the Southern African Development Community.

## 2

## OBJECTIVES

- 2.1 The Code's primary objective is to set out guidelines for employers and trade unions to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace. This includes provisions regarding:
- Creating a non-discriminatory work environment.
  - Dealing with HIV testing, confidentiality and disclosure.
  - Providing equitable employee benefits.
  - Dealing with dismissals.
  - Managing grievance procedures.
- 2.2 The Code's secondary objective is to provide guidelines for employers, employees and trade unions on how to manage HIV/AIDS within the workplace. Since the HIV/AIDS epidemic impacts upon the workplace and individuals at a number of different levels, it requires a holistic response which takes all of these factors into account. The Code therefore includes principles, which are dealt with in more detail under the statutes listed in item 5.1, on the following:
- Creating a safe working environment for all employers and employees.
  - Developing procedures to manage occupational incidents and claims for compensation.

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- Introducing measures to prevent the spread of HIV.
  - Developing strategies to assess and reduce the impact of the epidemic upon the workplace.
  - Supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible.
- 2.3 In addition, the Code promotes the establishment of mechanisms to foster co-operation at the following levels:
- Between employers, employees and trade unions in the workplace.
  - Between the workplace and other stakeholders at a sectoral, local, provincial and national level.

### 3

## **POLICY PRINCIPLES**

- 3.1 The promotion of equality and non-discrimination between individuals with HIV infection and those without, and between HIV/AIDS and other comparable health/medical conditions.
- 3.2 The creation of a supportive environment so that HIV infected employees are able to continue working under normal conditions in their current employment for as long as they are medically fit to do so.
- 3.3 The protection of human rights and dignity of people living with HIV or AIDS is essential to the prevention and control of HIV/AIDS.
- 3.4 HIV/AIDS impacts disproportionately on women and this should be taken into account in the development of workplace policies and programmes.
- 3.5 Consultation, inclusivity and encouraging full participation of all stakeholders are key principles which should underpin every HIV/AIDS policy and programme.

### 4

## **APPLICATION AND SCOPE**

- 4.1 All employers and employees, and their respective organisations are encouraged to use this Code to develop, implement and refine their HIV/AIDS policies and programmes to suit the needs of their workplaces.
- 4.2 For the purposes of this code, the term 'workplace' should be interpreted more broadly than the definition given in the Labour Relations Act, Act 66 of 1995, Section 213, to include the working environment of, amongst others, persons not necessarily in an employer-employee relationship, those working in the informal sector and the self-employed.

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- 4.3 This Code however does not impose any legal obligation in addition to those in the Employment Equity Act and Labour Relations Act, or in any other legislation referred to in the Code. Failure to observe it does not, by itself, render an employer liable in any proceedings, except where the Code refers to obligations set out in law.
- 4.4 The Code should be read in conjunction with other codes of good practice that may be issued by the Minister of Labour.

## 5

### **LEGAL FRAMEWORK**

- 5.1 The Code should be read in conjunction with the Constitution of South Africa Act, No. 108 of 1996, and all relevant legislation which includes the following:
- Employment Equity Act, No. 55 of 1998
  - Labour Relations Act, No. 66 of 1995
  - Occupational Health and Safety Act, No. 85 of 1993
  - Mine Health and Safety Act, No. 29 of 1996
  - Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993
  - Basic Conditions of Employment Act, No. 75 of 1997
  - Medical Schemes Act, No 131 of 1998
  - Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000.
- 5.2 The contents of this code should be taken into account when developing, implementing or reviewing any workplace policies or programmes in terms of the statutes listed above.
- 5.3 The following are selected, relevant sections contained in certain of the above-mentioned legislation. These should be read in conjunction with other legislative provisions.
- 5.3.1 The Code is issued in terms of Section 54(1)(a) of the Employment Equity Act, No. 55 of 1998 and is based on the principle that no person may be unfairly discriminated against on the basis of their HIV status. In order to assist employers and employees to apply this principle consistently in the workplace, the Code makes reference to other pieces of legislation.
- 5.3.2 Section 6(1) of the Employment Equity Act provides that no person may unfairly discriminate against an employee, or an applicant for employment, in any employment policy or practice, on the basis of his or her HIV status. In any legal proceedings in which it is alleged that any employer has discriminated unfairly, the employer must prove that any discrimination or differentiation was fair.

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- 5.3.3 No employee, or applicant for employment, may be required by their employer to undergo an HIV test in order to ascertain their HIV status. HIV testing by or on behalf of an employer may only take place where the Labour Court has declared such testing to be justifiable in accordance with Section 7(2) of the Employment Equity Act.
- 5.3.4 In accordance with Section 187(1)(f) of the Labour Relations Act, No. 66 of 1995, an employee with HIV/AIDS may not be dismissed simply because he or she is HIV positive or has AIDS. However where there are valid reasons related to their capacity to continue working and fair procedures have been followed, their services may be terminated in accordance with Section 188(1)(a)(i).
- 5.3.5 In terms of Section 8(1) of the Occupational Health and Safety Act, No. 85 of 1993; an employer is obliged to provide, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.6 Section 2(1) and Section 5(1) of the Mine Health and Safety Act, No. 29 of 1996 provides that an employer is required to create, as far as is reasonably practicable, a safe workplace. This may include ensuring that the risk of occupational exposure to HIV is minimised.
- 5.3.7 An employee who is infected with HIV as a result of an occupational exposure to infected blood or bodily fluids, may apply for benefits in terms of Section 22(1) of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993.
- 5.3.8 In accordance with the Basic Conditions of Employment Act, No. 75 of 1997, every employer is obliged to ensure that all employees receive certain basic standards of employment, including a minimum number of days sick leave [Section 22(2)].
- 5.3.9 In accordance with Section 24(2)(e) of the Medical Schemes Act, No 131 of 1998, a registered medical aid scheme may not unfairly discriminate directly or indirectly against its members on the basis of their “state of health”. Further in terms of s 67(1)(9) regulations may be drafted stipulating that all schemes must offer a minimum level of benefits to their members.
- 5.3.10 In accordance with both the common law and Section 14 of the Constitution of South Africa Act, No. 108 of 1996, all persons with HIV or AIDS have a right to privacy, including privacy concerning their HIV or AIDS status. Accordingly there is no general legal duty on an employee to disclose his or her HIV status to their employer or to other employees.

## PROMOTING A NON-DISCRIMINATORY WORK ENVIRONMENT

- 6.1 No person with HIV or AIDS shall be unfairly discriminated against within the employment relationship or within any employment policies or practices, including with regard to:
- Recruitment procedures, advertising and selection criteria
  - Appointments, and the appointment process, including job placement
  - Job classification or grading
  - Remuneration, employment benefits and terms and conditions of employment
  - Employee assistance programmes
  - Job assignments
  - Training and development
  - Performance evaluation systems
  - Promotion, transfer and demotion
  - Termination of services.
- 6.2 To promote a non-discriminatory work environment based on the principle of equality, employers and trade unions should adopt appropriate measures to ensure that employees with HIV and AIDS are not unfairly discriminated against and are protected from victimisation through positive measures such as:
- Preventing unfair discrimination and stigmatisation of people living with HIV or AIDS through the development of HIV/AIDS policies and programmes for the workplace.
  - Awareness, education and training on the rights of all persons with regard to HIV and AIDS.
  - Mechanisms to promote acceptance and openness around HIV/AIDS in the workplace.
  - Providing support for all employees infected or affected by HIV and AIDS.
  - Grievance procedures and disciplinary measures to deal with HIV-related complaints in the workplace.

## HIV TESTING, CONFIDENTIALITY AND DISCLOSURE

### 7.1 HIV testing

7.1.1 No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's HIV status. As provided for in the Employment Equity Act, employers may approach the Labour Court to obtain authorisation for testing.

*The Employment Equity Act does not make it a criminal offence for an employer to conduct a test in violation of s 7(2). However an employee who alleges that his or her right not to be tested has been violated may refer a dispute to the CCMA for conciliation, and if this does not resolve the dispute, to the Labour Court for determination.*

7.1.2 Whether s 7(2) of the Employment Equity Act prevents an employer-provided health service supplying a test to an employee who requests a test, depends on whether the Labour Courts would accept that an employee can knowingly agree to waive the protection in the section. This issue has not yet been decided by the courts.

7.1.3 In implementing the sections below, it is recommended that parties take note of the position set out in item 7.1.2.

#### 7.1.4 Authorised testing

Employers must approach the Labour Court for authorisation in, amongst others, the following circumstances:

- During an application for employment.
- As a condition of employment.
- During procedures related to termination of employment.
- As an eligibility requirement for training or staff development programmes.
- As an access requirement to obtain employee benefits.

#### 7.1.5 Permissible testing

(a) An employer may provide testing to an employee who has requested a test in the following circumstances:

- As part of a health care service provided in the workplace.
- In the event of an occupational accident carrying a risk of exposure to blood or other body fluids.
- For the purposes of applying for compensation following an occupational accident involving a risk of exposure to blood or other body fluids.

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(b) Furthermore, such testing may only take place within the following defined conditions:

- At the initiative of an employee.
- Within a health care worker and employee-patient relationship.
- With informed consent and pre- and post-test counselling, as defined by the Department of Health's National Policy on Testing for HIV.
- With strict procedures relating to confidentiality of an employee's HIV status as described in clause 7.2 of this Code.

7.1.6 All testing, including both authorised and permissible testing, should be conducted in accordance with the Department of Health's National Policy on Testing for HIV issued in terms of the National Policy for Health Act, No. 116 of 1990.

7.1.7 Informed consent means that the individual has been provided with information, understands it and based on this has agreed to undertake the HIV test. It implies that the individual understands what the test is, why it is necessary, the benefits, risks, alternatives and any possible social implications of the outcome.

*See amongst others the Department of Health's National Policy for Testing for HIV and the Biological Hazardous Agents Regulations.*

7.1.8 Anonymous, unlinked surveillance or epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with ethical and legal principles regarding such research. Where such research is done, the information obtained may not be used to unfairly discriminate against individuals or groups of persons. Testing will not be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the results.

## 7.2 Confidentiality and disclosure

7.2.1 All persons with HIV or AIDS have the legal right to privacy. An employee is therefore not legally required to disclose his or her HIV status to their employer or to other employees.

7.2.2 Where an employee chooses to voluntarily disclose his or her HIV status to the employer or to other employees, this information may not be disclosed to others without the employee's express written consent. Where written consent is not possible, steps must be taken to confirm that the employee wishes to disclose his or her status.

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- 7.2.3 Mechanisms should be created to encourage openness, acceptance and support for those employers and employees who voluntarily disclose their HIV status within the workplace, including:
- Encouraging persons openly living with HIV or AIDS to conduct or participate in education, prevention and awareness programmes.
  - Encouraging the development of support groups for employees living with HIV or AIDS.
  - Ensuring that persons who are open about their HIV or AIDS status are not unfairly discriminated against or stigmatised.

## 8

### **PROMOTING A SAFE WORKPLACE**

- 8.1 An employer is obliged to provide and maintain, as far as is reasonably practicable, a workplace that is safe and without risk to the health of its employees.
- 8.2 The risk of HIV transmission in the workplace is minimal. However occupational accidents involving bodily fluids may occur, particularly in the health care professions. Every workplace should ensure that it complies with the provisions of the Occupational Health and Safety Act, including the Regulations on Hazardous Biological Agents, and the Mine Health and Safety Act, and that its policy deals with, amongst others:
- The risk, if any, of occupational transmission within the particular workplace.
  - Appropriate training, awareness, education on the use of universal infection control measures so as to identify, deal with and reduce the risk of HIV transmission in the workplace.
  - Providing appropriate equipment and materials to protect employees from the risk of exposure to HIV.
  - The steps that must be taken following an occupational accident including the appropriate management of occupational exposure to HIV and other blood borne pathogens, including access to post-exposure prophylaxis.
  - The procedures to be followed in applying for compensation for occupational infection.
  - The reporting of all occupational accidents.
  - Adequate monitoring of occupational exposure to HIV to ensure that the requirements of possible compensation claims are being met.

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**9**

## **COMPENSATION FOR OCCUPATIONALLY ACQUIRED HIV**

- 9.1 An employee may be compensated if he or she becomes infected with HIV as a result of an occupational accident, in terms of the Compensation for Occupational Injuries and Diseases Act.

Employers should take reasonable steps to assist employees with the application for benefits including:

- Providing information to affected employees on the procedures that should be followed in order to qualify for a compensation claim.
  - Assisting with the collection of information which will assist with proving that the employees were occupationally exposed to HIV infected blood.
- 9.2 Occupational exposure should be dealt with in terms of the Compensation for Occupational Injuries and Diseases Act. Employers should ensure that they comply with the provisions of this Act and any procedure or guideline issued in terms thereof.

**10**

## **EMPLOYEE BENEFITS**

- 10.1 Employees with HIV or AIDS may not be unfairly discriminated against in the allocation of employee benefits.
- 10.2 Employees who become ill with AIDS should be treated like any other employee with a comparable life threatening illness with regard to access to employee benefits.
- 10.3 Information from benefit schemes on the medical status of an employee should be kept confidential and should not be used to unfairly discriminate.
- 10.4 Where an employer offers a medical scheme as part of the employee benefit package it must ensure that this scheme does not unfairly discriminate, directly or indirectly, against any person on the basis of his or her HIV status.

**11**

## **DISMISSAL**

- 11.1 Employees with HIV/AIDS may not be dismissed solely on the basis of their HIV/AIDS status.
- 11.2 Where an employee has become too ill to perform their current work, an employer is obliged to follow accepted guidelines regarding dismissal for incapacity before terminating an employee's services, as set out in the Code of Good Practice on Dismissal contained in Schedule 8 of the Labour Relations Act.

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- 11.3 The employer should ensure that as far as possible, the employee's right to confidentiality regarding his or her HIV status is maintained during any incapacity proceedings. An employee cannot be compelled to undergo an HIV test or to disclose his or her HIV status as part of such proceedings unless the Labour Court authorised such a test.

## 12

### **GRIEVANCE PROCEDURES**

- 12.1 Employers should ensure that the rights of employees with regard to HIV/AIDS, and the remedies available to them in the event of a breach of such rights, become integrated into existing grievance procedures.
- 12.2 Employers should create an awareness and understanding of the grievance procedures and how employees can utilise them.
- 12.3 Employers should develop special measures to ensure the confidentiality of the complainant during such proceedings, including ensuring that such proceedings are held in private.

## 13

### **MANAGEMENT OF HIV IN THE WORKPLACE**

- 13.1 The effective management of HIV/AIDS in the workplace requires an integrated strategy that includes, amongst others, the following elements:
- 13.1.1 An understanding and assessment of the impact of HIV/AIDS on the workplace.
- 13.1.2 Long and short term measures to deal with and reduce this impact, including:
- An HIV/AIDS policy for the workplace
  - HIV/AIDS programmes, which would incorporate:
    - Ongoing sustained prevention of the spread of HIV among employees and their communities.
    - Management of employees with HIV so that they are able to work productively for as long as possible.
    - Strategies to deal with the direct and indirect costs of HIV/AIDS in the workplace.

## ASSESSING THE IMPACT OF HIV/AIDS ON THE WORKPLACE

- 14.1 Employers and trade unions should develop appropriate strategies to understand, assess and respond to the impact of HIV/AIDS in their particular workplace and sector. This should be done in cooperation with sectoral, local, provincial and national initiatives by government, civil society and non-governmental organisations.
- 14.2 Broadly, impact assessments should include:
- Risk profiles
  - Assessment of the direct and indirect costs of HIV/AIDS.
- 14.3 Risk profiles may include an assessment of the following:
- The vulnerability of individual employees or categories of employees to HIV infection.
  - The nature and operations of the organisation and how these may increase susceptibility to HIV infection (eg migrancy or hostel dwellings).
  - A profile of the communities from which the organisation draws its employees.
  - A profile of the communities surrounding the organisation's place of operation.
  - An assessment of the impact of HIV/AIDS upon their target markets and client base.
- 14.4 The assessments should also consider the impact that the HIV/AIDS epidemic may have on:
- Direct costs such as costs to employee benefits, medical costs and increased costs related to staff turnover such as training and recruitment costs and the costs of implementing an HIV/AIDS programme.
  - Indirect costs such as costs incurred as a result of increased absenteeism, employee morbidity, loss of productivity, a general decline in workplace morale and possible workplace disruption.
- 14.5. The cost effectiveness of any HIV/AIDS interventions should also be measured as part of an impact assessment.

## MEASURES TO DEAL WITH HIV/AIDS WITHIN THE WORKPLACE

### 15.1 A workplace HIV/AIDS policy

*This policy could either be a specific policy on HIV/AIDS, or could be incorporated in a policy on life threatening illness.*

- 15.1.1 Every workplace should develop an HIV/AIDS policy, in order to ensure that employees affected by HIV/AIDS are not unfairly discriminated against in employment policies and practices. This policy should cover:
- The organisation's position on HIV/AIDS.
  - An outline of the HIV/AIDS programme.
  - Details on employment policies (e.g. position regarding HIV testing, employee benefits, performance management and procedures to be followed to determine medical incapacity and dismissal).
  - Express standards of behaviour expected of employers and employees and appropriate measures to deal with deviations from these standards.
  - Grievance procedures in line with item 12 of this Code.
  - Set out the means of communication within the organisation on HIV/AIDS issues.
  - Details of employee assistance available to persons affected by HIV/AIDS.
  - Details of implementation and coordination responsibilities.
  - Monitoring and evaluation mechanisms.
- 15.1.2 All policies should be developed in consultation with key stakeholders within the workplace including trade unions, employee representatives, occupational health staff and the human resources department.
- 15.1.3 The policy should reflect the nature and needs of the particular workplace.
- 15.1.4 Policy development and implementation is a dynamic process, so the workplace policy should be:
- Communicated to all concerned.
  - Routinely reviewed in light of epidemiological and scientific information.
  - Monitored for its successful implementation and evaluated for its effectiveness.

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## 15.2 Developing workplace HIV/AIDS programmes

15.2.1 It is recommended that every workplace works towards developing and implementing a workplace HIV/AIDS programme aimed at preventing new infections, providing care and support for employees who are infected or affected, and managing the impact of the epidemic in the organisation.

15.2.2 The nature and extent of a workplace programme should be guided by the needs and capacity of each individual workplace. However, it is recommended that every workplace programme should attempt to address the following in cooperation with the sectoral, local, provincial and national initiatives:

- Hold regular HIV/AIDS awareness programmes.
- Encourage voluntary testing.
- Conduct education and training on HIV/AIDS.
- Promote condom distribution and use.
- Encourage health seeking behaviour for STD's.
- Enforce the use of universal infection control measures.
- Create an environment that is conducive to openness, disclosure and acceptance amongst all staff.
- Endeavour to establish a wellness programme for employees affected by HIV/AIDS.
- Provide access to counselling and other forms of social support for people affected by HIV/AIDS.
- Maximise the performance of affected employees through reasonable accommodation, such as investigations into alternative sick leave allocation.
- Develop strategies to address direct and indirect costs associated with HIV/AIDS in the workplace, as outlined under item 14.4.
- Regularly monitor, evaluate and review the programme.

15.2.3 Employers should take all reasonable steps to assist employees with referrals to appropriate health, welfare and psycho-social facilities within the community, if such services are not provided at the workplace

## 16

## INFORMATION AND EDUCATION

- 16.1 The Department of Labour should ensure that copies of this code are available and accessible.
- 16.2 Employers and employer organisations should include the Code in their orientation, education and training programmes of employees.
- 16.3 Trade unions should include the Code in their education and training programmes of shop stewards and employees.

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## GLOSSARY

**Affected employee:** an employee who is affected in any way by HIV/AIDS eg if they have a partner or a family member who is HIV positive.

**AIDS:** AIDS is the acronym for 'acquired immune deficiency syndrome'. AIDS is the clinical definition given to the onset of certain life-threatening infections in persons whose immune systems have ceased to function properly as a result of infection with HIV.

**Epidemiological:** The study of disease patterns, causes, distribution and mechanisms of control in society.

**HIV:** HIV is the acronym for 'human immuno deficiency virus'. HIV is a virus which attacks and may ultimately destroy the body's natural immune system.

**HIV testing:** taking a medical test to determine a person's HIV status. This may include written or verbal questions inquiring about previous HIV tests; questions related to the assessment of 'risk behaviour' (for example questions regarding sexual practices, the number of sexual partners or sexual orientation); and any other indirect methods designed to ascertain an employee's or job applicant's HIV status.

**HIV positive:** having tested positive for HIV infection.

**Infected employee:** an employee who has tested positive for HIV or who has been diagnosed as having HIV/AIDS.

**Informed consent:** a process of obtaining consent from a patient which ensures that the person fully understands the nature and implications of the test before giving his or her agreement to it.

**Policy:** a document setting out an organisation's position on a particular issue.

**Pre- and post-test counselling:** a process of counselling which facilitates an understanding of the nature and purpose of the HIV test. It examines what advantages and disadvantages the test holds for the person and the influence the result, positive or negative, will have on them.

**Reasonable accommodation:** means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with HIV or AIDS to have access to or participate or advance in employment.

**STDs:** acronym for 'sexually transmitted diseases'. These are infections passed from one person to another during sexual intercourse, including syphilis, gonorrhoea and HIV.

**Surveillance testing:** This is anonymous, unlinked testing which is done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease.



## National Policy on HIV/AIDS for Learners and Educators

In August 1999, the Minister of Education launched the *National Policy on HIV/AIDS for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions*. The National Policy was the result of several years of consultation between NGOs, the South African Law Commission and the Department of Education. It emphasises the vulnerability of young people to HIV infection, and is aimed at educators and learners.

While the National Policy is a voluntary guideline for schools, many parts of the policy are already legal rights, eg protection of rights to privacy.

*You can use the National Policy:*

- To discuss managing HIV and AIDS in the school environment.
- To support learners and educators living with or affected by HIV or AIDS.



### PREAMBLE

Acquired Immune Deficiency Syndrome (AIDS) is a communicable disease that is caused by the Human Immunodeficiency Virus (HIV).

In South Africa, HIV is spread mainly through sexual contact between men and women. In addition, around one third of babies born to HIV-infected women will be infected at birth or through breast-feeding. The risk of transmission of the virus from mother to baby is reduced by antiretroviral drugs.

Infection through contact with HIV-infected blood, intravenous drug use and homosexual sex does occur in South Africa, but constitutes a very small proportion of all infections. Blood transfusions are thoroughly screened and the chances of infection from transfusion are extremely low.

People do not develop AIDS as soon as they are infected with HIV. Most experience a long period of around 5 – 8 years during which they feel well and remain productive members of families and workforces. In this asymptomatic period, they can pass their infection on to other people without realising that they are HIV infected.

During the asymptomatic period, the virus gradually weakens the infected person's immune system, making it increasingly difficult to fight off other infections. Symptoms start to occur and people develop conditions such as skin rashes, chronic diarrhoea, weight loss, fevers, swollen lymph glands and certain cancers. Many of these problems can be prevented or treated effectively. Although these infections can be treated, the underlying HIV infection cannot be cured.

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Once HIV-infected people have a severe infection or cancer (a condition known as symptomatic AIDS) they usually die within 1 to 2 years. The estimated average time from HIV infection to death in South Africa is 6 to 10 years. Many HIV infected people progress to AIDS and death in much shorter periods. Some live for 10 years or more with minimal health problems, but virtually all will eventually die of AIDS.

HIV-infected babies generally survive for shorter periods than HIV-infected adults. Many die within two years of birth, and most will die before they turn five. However, a significant number may survive even into their teenage years before developing AIDS.

***No cure for HIV infection is available at present. Any cure which is discovered may well be unaffordable for most South Africans.***

HIV/AIDS is one of the major challenges to all South Africans. The findings of the 1998 HIV survey among pregnant women attending public antenatal clinics of the Department of Health, show that the HIV/AIDS epidemic in South Africa is among the most severe in the world and it continues to increase at an alarming pace. The rate of increase is estimated at 33.8%. Using these figures, it is estimated that one in eight of the country's sexually active population – those over the age of 14 years – is now infected. In the antenatal survey, the prevalence of HIV/AIDS among pregnant women under the age of 20 years has risen by a frightening 65.4% from 1997 to 1998.

According to the 1998 United Nations Report on HIV/AIDS Human Development in South Africa, it is estimated that almost 25% of the general population will be HIV positive by the year 2010. The achievements of recent decades, particularly in relation to life expectancy and educational attainment, will inevitably be slowed down by the impact of current high rates of HIV prevalence and the rise in AIDS-related illnesses and deaths. This will place increased pressures on learners, students and educators.

Because the Ministry of Education acknowledges the seriousness of the HIV/AIDS epidemic, and international and local evidence suggests that there is a great deal that can be done to influence the course of the epidemic, the Ministry is committed to minimise the social, economic and developmental consequences of HIV/AIDS to the education system, all learners, students and educators, and to provide leadership to implement an HIV/AIDS policy. This policy seeks to contribute towards promoting effective prevention and care within the context of the public education system.

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In keeping with international standards and in accordance with education law and the constitutional guarantees of the right to a basic education, the right not to be unfairly discriminated against, the right to life and bodily integrity, the right to privacy, the right to freedom of access to information, the right to freedom of conscience, religion, thought, belief and opinion, the right to freedom of association, the right to a safe environment, and the best interests of the child, the following shall constitute national policy.

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## DEFINITIONS

In this policy any expression to which a meaning has been assigned in the South African Schools Act, 1996 (Act No. 84 of 1996), the Further Education and Training Act, 1998 (Act No. 98 of 1998) and the Employment of Educators Act, 1998 (Act No. 76 of 1998), shall have that meaning and, unless the context otherwise indicates –

“**AIDS**” means the acquired immune deficiency syndrome, that is the final phase of HIV infection;

“**HIV**” means the human immunodeficiency virus;

“**institution**” means an institution for further education and training, including an institution contemplated in section 38 of the Further Education and Training Act, 1998 (Act No. 98 of 1998);

“**sexual abuse**” means abuse of a person targeting their sexual organs, e.g. rape, touching their private parts, or inserting objects into their private parts;

“**unfair discrimination**” means direct or indirect unfair discrimination against anyone on one or more grounds in terms of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**universal precautions**” refers to the concept used worldwide in the context of HIV/AIDS to indicate standard infection control procedures or precautionary measures aimed at the prevention of HIV transmission from one person to another and includes procedures concerning basic hygiene and the wearing of protective clothing such as latex or rubber gloves or plastic bags when there is a risk of exposure to blood, blood-borne pathogens or blood-stained body fluids;

“**violence**” means violent conduct or treatment that harms the person of the victim, for example assault and rape;

“**window period**” means the period of up to three months before HIV antibodies appear in the blood following HIV infection. During this period HIV tests cannot determine whether a person is infected with HIV or not.

## PREMISES

- 2.1 Although there are no known cases of the transmission of HIV in schools or institutions, there are learners with HIV/AIDS in schools. More and more children who acquire HIV prenatally will, with adequate medical care, reach school-going age and attend school. Consequently a large proportion of the learner and student population and educators are at risk of contracting HIV/AIDS.
- 2.2 HIV cannot be transmitted through day-to-day social contact. The virus is transmitted only through blood, semen, vaginal and cervical fluids and breast milk. Although the virus has been identified in other body fluids such as saliva and urine, no scientific evidence exists to show that these fluids can cause transmission of HIV.
- 2.3 Because of the increase in infection rates, learners, students and educators with HIV/AIDS will increasingly form part of the population of schools and institutions. Since many young people are sexually active, increasing numbers of learners attending primary and secondary schools, and students attending institutions might be infected. Moreover, there is a risk of HIV transmission as a result of sexual abuse of children in our country. Intravenous drug abuse is also a source of HIV transmission among learners and students. Although the possibility is remote, recipients of infected blood products during blood transfusions (for instance haemophiliacs), may also be present at schools and institutions. Because of the increasing prevalence of HIV/AIDS in schools, it is imperative that each school must have a planned strategy to cope with the epidemic.
- 2.4 Because of the nature of HIV antibody testing and the “window period” or “apparently well period” between infection and the onset of clearly identifiable symptoms, it is impossible to know with absolute certainty who has HIV/AIDS and who does not. Although the Department of Health conducts tests among women attending ante-natal clinics in public health facilities in South Africa as a mechanism of monitoring the progression of the HIV epidemic in South Africa, testing for HIV/AIDS for employment or attendance at schools is prohibited.
- 2.5 Compulsory disclosure of a learner’s, student’s or educator’s HIV/AIDS status to school or institution authorities is not advocated as this would serve no meaningful purpose. In case of disclosure, educators should be prepared to handle such disclosures and be given support to handle confidentiality issues.

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- 2.6 Learners and students with HIV/AIDS should lead as full a life as possible and should not be denied the opportunity to receive an education to the maximum of their ability. Likewise, educators with HIV/AIDS should lead as full a professional life as possible, with the same rights and opportunities as other educators and with no unfair discrimination being practised against them. Infection control measures and adaptations must be universally applied and carried out regardless of the known or unknown HIV status of individuals concerned.
- 2.6.1 The risk of transmission of HIV in the day-to-day school or institution environment in the context of physical injuries, can be effectively eliminated by following standard infection-control procedures or precautionary measures (also known as universal precautions) and good hygiene practices under all circumstances. This would imply that in situations of potential exposure, such as in dealing with accidental or other physical injuries, or medical intervention on school or institution premises in case of illness, all persons should be considered as potentially infected and their blood and body fluids treated as such.
- 2.6.2 Strict adherence to universal precautions under all circumstances in the school or institution is advised.
- 2.6.3 Current scientific evidence suggests that the risk of HIV transmission during teaching, sport and play activities is insignificant. There is no risk of transmission from saliva, sweat, tears, urine, respiratory droplets, handshaking, swimming-pool water, communal bath water, toilets, food or drinking water. The statement about the insignificant risk of transmission during teaching, sport and play activities, however, holds true only if universal precautions are adhered to. Adequate wound management has to take place in the classroom and laboratory or on the sports field or playground when a learner or student sustains an open bleeding wound. Contact sports such as boxing and rugby could probably be regarded as sports representing a higher risk of HIV transmission than other sports, although the inherent risk of transmission during any such sport is very low.
- 2.6.4 Public funds should be made available to ensure the application of universal precautions and the supply of adequate information and education on HIV transmission. The State's duty to take all reasonable steps to ensure safe school and institution environments, is regarded as a sound investment in the future of South Africa.

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- 2.6.5 Within the context of sexual relations, the risk of contracting HIV is significant. There are high levels of sexually active persons within the learner population group in schools. This increases the risk of HIV transmission in schools and institutions for further education and training considerably. Besides sexuality education, morality and life skills education being provided by educators, parents should be encouraged to provide their children with healthy morals, sexuality education and guidance regarding sexual abstinence until marriage and faithfulness to their partners. Sexually active persons should be advised to practise safe sex and to use condoms. Learners and students should be educated about their rights concerning their own bodies, to protect themselves against rape, violence, inappropriate sexual behaviour and contracting HIV.
- 2.7 The constitutional rights of all learners, students and educators must be protected on an equal basis. If a suitably qualified person ascertains that a learner, student or educator poses a medically recognised significant health risk to others, appropriate measures should be taken. A medically recognised significant health risk in the context of HIV/AIDS could include the presence of untreatable contagious (highly communicable) diseases, uncontrollable bleeding, unmanageable wounds, or sexual or physically aggressive behaviour, which may create the risk of HIV transmission.
- 2.8 Furthermore, learners and students with infectious illnesses such as measles, German measles, chicken pox, whooping cough and mumps should be kept away from the school or institution to protect all other members of the school or institution, especially those whose immune systems may be impaired by HIV/AIDS.
- 2.9 Schools and institutions should inform parents of vaccination/inoculation programmes and of their possible significance for the wellbeing of learners and students with HIV/AIDS. Local health clinics could be approached to assist with immunisation.
- 2.10 Learners and students must receive education about HIV/AIDS and abstinence in the context of life-skills education on an ongoing basis. Life-skills and HIV/AIDS education should not be presented as isolated learning content, but should be integrated in the whole curriculum. It should be presented in a scientific but understandable way. Appropriate course content should be available for the pre-service and in-service training of educators to cope with HIV/AIDS in schools. Enough educators to educate learners about the epidemic should also be provided.

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- 2.10.1 The purpose of education about HIV/AIDS is to prevent the spread of HIV infection, to allay excessive fears of the epidemic, to reduce the stigma attached to it and to instill non-discriminatory attitudes towards persons with HIV/AIDS. Education should ensure that learners and students acquire age-and context-appropriate knowledge and skills in order that they may adopt and maintain behaviour that will protect them from HIV infection.
- 2.10.2 In the primary grades, the regular educator should provide education about HIV/AIDS, while in secondary grades the guidance counsellor would ideally be the appropriate educator. Because of the sensitive nature of the learning content, the educators selected to offer this education should be specifically trained and supported by the support staff responsible for life-skills and HIV/AIDS education in the school and province. The educators should feel at ease with the content and should be a role-model with whom learners and students can easily identify. Educators should also be informed by the principal and educator unions of courses for educators to improve their knowledge of, and skills to deal with, HIV/AIDS.
- 2.10.3 All educators should be trained to give guidance on HIV/AIDS. Educators should respect their position of trust and the constitutional rights of all learners and students in the context of HIV/AIDS.
- 2.11 In order to meet the demands of the wide variety of circumstances posed by the South African community and to acknowledge the importance of governing bodies, councils and parents in the education partnership, this national policy is intended as broad principles only. It is envisaged that the governing body of a school, acting within its functions under the South African Schools Act, 1996, and the Council of a Further Education and Training Institution, acting within its functions under the Further Education and Training Act, 1998, or any provincial law, should preferably give operational effect to the national policy by developing and adopting an HIV/AIDS implementation plan that would reflect the needs, ethos and values of a specific school or institution and its community within the framework of the national policy.

## **NON-DISCRIMINATION AND EQUALITY WITH REGARD TO LEARNERS, STUDENTS AND EDUCATORS WITH HIV/AIDS**

- 3.1 No learner, student or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly. Educators should be alert to unfair accusations against any person suspected to have HIV/AIDS.
- 3.2 Learners, students, educators and other staff with HIV/AIDS should be treated in a just, humane and life-affirming way.
- 3.3 Any special measures in respect of a learner, student or educator with HIV should be fair and justifiable in the light of medical facts; established legal rules and principles; ethical guidelines; the best interest of the learner, student and educator with HIV/AIDS; school or institution conditions; and the best interest of other learners, students and educators.
- 3.4 To prevent discrimination, all learners, students and educators should be educated about fundamental human rights as contained in the Constitution of the Republic of South Africa, 1996.

## **HIV/AIDS TESTING AND THE ADMISSION OF LEARNERS TO A SCHOOL AND STUDENTS TO AN INSTITUTION, OR THE APPOINTMENT OF EDUCATORS**

- 4.1 No learner or student may be denied admission to or continued attendance at a school or an institution on account of his or her HIV/AIDS status or perceived HIV/AIDS status.
- 4.2 No educator may be denied the right to be appointed in a post, to teach or to be promoted on account of his or her HIV/AIDS status or perceived HIV/AIDS status. HIV/AIDS status may not be a reason for dismissal of an educator, nor for refusing to conclude, or continue, or renew an educator's employment contract, nor to treat him or her in any unfair discriminatory manner.
- 4.3 There is no medical justification for routine testing of learners, students or educators for evidence of HIV infection. The testing of learners or students for HIV/AIDS as a prerequisite for admission to, or continued attendance at school or institution, to determine the incidence of HIV/AIDS at schools or institutions, is prohibited. The testing of educators for HIV/AIDS as a prerequisite for appointment or continued service is prohibited.

## **ATTENDANCE AT SCHOOLS AND INSTITUTIONS BY LEARNERS OR STUDENTS WITH HIV/AIDS**

- 5.1 Learners and students with HIV have the right to attend any school or institution. The needs of learners and students with HIV/AIDS with regard to their right to basic education should as far as is reasonably practicable be accommodated in the school or institution.
- 5.2 Learners and students with HIV/AIDS are expected to attend classes in accordance with statutory requirements for as long as they are able to do so effectively.
- 5.3 Learners of compulsory school-going age with HIV/AIDS, who are unable to benefit from attendance at school or home education, may be granted exemption from attendance in terms of section 4(1) of the South African Schools Act, 1996, by the Head of Department, after consultation with the principal, the parent and the medical practitioner where possible.
- 5.4 If and when learners and students with HIV/AIDS become incapacitated through illness, the school or institution should make work available to them for study at home and should support continued learning where possible. Parents should, where practically possible, be allowed to educate their children at home in accordance with the policy for home education in terms of section 51 of the South African Schools Act, 1996, or provide older learners with distance education.
- 5.5 Learners and students who cannot be accommodated in this way or who develop HIV/AIDS-related behavioural problems or neurological damage, should be accommodated, as far as is practically possible, within the education system in special schools or specialised residential institutions for learners with special education needs. Educators in these institutions must be empowered to take care of and support HIV-positive learners. However, placement in special schools should not be used as an excuse to remove HIV-positive learners from mainstream schools.

## **DISCLOSURE OF HIV/AIDS-RELATED INFORMATION AND CONFIDENTIALITY**

- 6.1 No learner or student (or parent on behalf of a learner or student), or educator, is compelled to disclose his or her HIV/AIDS status to the school or institution or employer. (In cases where the medical condition diagnosed is the HIV/AIDS disease, the Regulations relating to communicable diseases and the notification of notifiable medical conditions [Health Act, 1977] only require the person performing the diagnosis to inform the immediate family members and the persons giving care to the person and, in cases of HIV/AIDS-related death, the persons responsible for the preparation of the body of the deceased.)

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- 6.2 Voluntary disclosure of a learner's, student's or educator's HIV/AIDS status to the appropriate authority should be welcomed and an enabling environment should be cultivated in which the confidentiality of such information is ensured and in which unfair discrimination is not tolerated. In terms of section 39 of the Child Care Act, 1983 (Act No. 74 of 1983), any learner or student above the age of 14 years with HIV/AIDS, or if the learner is younger than 14 years, his or her parent, is free to disclose such information voluntarily.
  - 6.3 A holistic programme for life-skills and HIV/AIDS education should encourage disclosure. In the event of voluntary disclosure, it may be in the best interests of a learner or student with HIV/AIDS if a member of the staff of the school or institution directly involved with the care of the learner or student, is informed of his or her HIV/AIDS status. An educator may disclose his or her HIV/AIDS status to the principal of the school or institution.
  - 6.4 Any person to whom any information about the medical condition of a learner, student or educator with HIV/AIDS has been divulged, must keep this information confidential.
  - 6.5 Unauthorised disclosure of HIV/AIDS-related information could give rise to legal liability.
  - 6.6 No employer can require an applicant for a job to undergo an HIV test before he/she is considered for employment. An employee cannot be dismissed, retrenched or refused a job simply because he or she is HIV positive.

## 7

### **A SAFE SCHOOL AND INSTITUTION ENVIRONMENT**

- 7.1 The MEC should make provision for all schools and institutions to implement universal precautions to eliminate the risk of transmission of all blood-borne pathogens, including HIV, effectively in the school or institution environment. Universal precautions include the following:
  - 7.1.1 The basis for advocating the consistent application of universal precautions lies in the assumption that in situations of potential exposure to HIV, all persons are potentially infected and all blood should be treated as such. All blood, open wounds, sores, breaks in the skin, grazes and open skin lesions, as well as all body fluids and excretions which could be stained or contaminated with blood (for example tears, saliva, mucus, phlegm, urine, vomit, faeces and pus) should therefore be treated as potentially infectious.

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- Blood, especially in large spills such as from nosebleeds, and old blood or blood stains, should be handled with extreme caution.
  - Skin exposed accidentally to blood should be washed immediately with soap and running water.
  - All bleeding wounds, sores, breaks in the skin, grazes and open skin lesions should ideally be cleaned immediately with running water and/or other antiseptics.
  - If there is a biting or scratching incident where the skin is broken, the wound should be washed and cleansed under running water, dried, treated with antiseptic and covered with a waterproof dressing.
  - Blood splashes to the face (mucous membranes of eyes, nose or mouth) should be flushed with running water for at least three minutes.
  - Disposable bags and incinerators must be made available to dispose of sanitary wear.
- 7.1.2 All open wounds, sores, breaks in the skin, grazes and open skin lesions should at all times be covered completely and securely with a non-porous or waterproof dressing or plaster so that there is no risk of exposure to blood.
- 7.1.3 Cleansing and washing should always be done with running water and not in containers of water. Where running tap water is not available, containers should be used to pour water over the area to be cleansed. Schools without running water should keep a supply, e.g. in a 25-litre drum, on hand specifically for use in emergencies. This water can be kept fresh for a long period of time by adding a disinfectant, such as Milton, to it.
- 7.1.4 All persons attending to blood spills, open wounds, sores, breaks in the skin, grazes, open skin lesions, body fluids and excretions should wear protective latex gloves or plastic bags over their hands to eliminate the risk of HIV transmission effectively. Bleeding can be managed by compression with material that will absorb the blood, e.g. a towel.
- 7.1.5 If a surface has been contaminated with body fluids and excretions which could be stained or contaminated with blood (for instance tears, saliva, mucus, phlegm, urine, vomit, faeces and pus), that surface should be cleaned with running water and fresh, clean household bleach (1:10 solution), and paper or disposable cloths. The person doing the cleaning must wear protective gloves or plastic bags.
- 7.1.6 Blood-contaminated material should be sealed in a plastic bag and incinerated or sent to an appropriate disposal firm. Tissues and toilet paper can readily be flushed down a toilet.

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- 7.1.7 If instruments (for instance scissors) become contaminated with blood or other body fluids, they should be washed and placed in a strong household bleach solution for at least one hour before drying and re-using.
- 7.1.8 Needles and syringes should not be re-used, but should be safely disposed of.
- 7.2 All schools and institutions should train learners, students, educators and staff in first aid, and have available and maintain at least two first-aid kits, each of which should contain the following:
- Two large and two medium pairs of disposable latex gloves.
  - Two large and two medium pairs of household rubber gloves for handling blood-soaked material in specific instances (for example when broken glass makes the use of latex gloves inappropriate).
  - Absorbent material, waterproof plasters, disinfectant (such as hypochlorite), scissors, cotton wool, gauze tape, tissues, containers for water and a resuscitation mouth piece or similar device with which mouth-to-mouth resuscitation could be applied without any contact being made with blood or other body fluids.
  - Protective eye wear.
  - A protective face mask to cover nose and mouth.
- 7.3 Universal precautions are in essence barriers to prevent contact with blood or body fluids. Adequate barriers can also be established by using less sophisticated devices than those described in 7.2, such as:
- Unbroken plastic bags on hands where latex or rubber gloves are not available.
  - Common household bleach for use as disinfectant, diluted one part bleach to ten parts water (1:10 solution) made up as needed.
  - Spectacles.
  - A scarf.
- 7.4 Each classroom or other teaching area should preferably have a pair of latex or household rubber gloves.
- 7.5 Latex or household rubber gloves should be available at every sports event and should also be carried by the playground supervisor.
- 7.6 First-aid kits and appropriate cleaning equipment should be stored in one or more selected rooms in the school or institution and should be accessible at all times, also by the playground supervisor.
- 7.7 Used items should be dealt with as indicated in paragraphs 7.1.6 and 7.1.7.
- 7.8 The contents of the first-aid kits, or the availability of other suitable barriers, should be checked each week against a contents list by a designated staff member of the school or institution. Expired and depleted items should be replaced immediately.

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- 7.9 A fully equipped first-aid kit should be available at all school or institution events, outings and tours, and should be kept on vehicles for the transport of learners to such events.
  - 7.10 All learners, students, educators and other staff members, including sports coaches, should be given appropriate information and training on HIV transmission, the handling and use of first-aid kits, the application of universal precautions and the importance of adherence universal precautions.
    - 7.10.1 Learners, students, educators and other staff members should be trained to manage their own bleeding or injuries and to assist and protect others.
    - 7.10.2 Learners, especially those in pre-primary and primary schools, and students should be instructed never to touch the blood, open wounds, sores, breaks in the skin, grazes and open skin lesions of others, nor to handle emergencies such as nosebleeds, cuts and scrapes of friends on their own. They should be taught to call for the assistance of an educator or other staff member immediately.
    - 7.10.3 Learners and students should be taught that all open wounds, sores, breaks in the skin, grazes and open skin lesions on all persons should be kept covered completely with waterproof dressings or plasters at all times, not only when they occur in the school or institution environment.
  - 7.11 All cleaning staff, learners, students, educators and parents should be informed about the universal precautions that will be adhered to at a school or an institution.
  - 7.12 A copy of this policy must be kept in the media centre of each school or institution.

## 8

### **PREVENTION OF HIV TRANSMISSION DURING PLAY AND SPORT**

- 8.1 The risk of HIV transmission as a result of contact play and contact sport is generally insignificant.
  - 8.1.1 The risk increases where open wounds, sores, breaks in the skin, grazes, open skin lesions or mucous membranes of learners, students and educators are exposed to infected blood.
  - 8.1.2 Certain contact sports may represent an increased risk of HIV transmission.

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- 8.2 Adequate wound management, in the form of the application of universal precautions, is essential to contain the risk of HIV transmission during contact play and contact sport.
    - 8.2.1 No learner, student or educator may participate in contact play or contact sport with an open wound, sore, break in the skin, graze or open skin lesion.
    - 8.2.2 If bleeding occurs during contact play or contact sport, the injured player should be removed from the playground or sports field immediately and treated appropriately as described in paragraphs 7.1.1 to 7.1.4. Only then may the player resume playing and only for as long as any open wound, sore, break in the skin, graze or open skin lesion remains completely and securely covered.
    - 8.2.3 Blood-stained clothes must be changed.
    - 8.2.4 The same precautions should be applied to injured educators, staff members and injured spectators.
  - 8.3 A fully equipped first-aid kit should be available wherever contact play or contact sport takes place.
  - 8.4 Sports participants, including coaches, with HIV/AIDS should seek medical counselling before participation in sport, in order to assess risks to their own health as well as the risk of HIV transmission to other participants.
  - 8.5 Staff members acting as sports administrators, managers and coaches should ensure the availability of first-aid kits and the adherence to universal precautions in the event of bleeding during participation in sport.
  - 8.6 Staff members acting as sports administrators, managers and coaches have special opportunities for meaningful education of sports participants with respect to HIV/AIDS. They should encourage sports participants to seek medical and other appropriate counselling where appropriate.

## 9

### **EDUCATION ON HIV/AIDS**

- 9.1 A continuing life-skills and HIV/AIDS education programme must be implemented at all schools and institutions for all learners, students, educators and other staff members. Measures must also be implemented at hostels.
- 9.2 Age-appropriate education on HIV/AIDS must form part of the curriculum for all learners and students, and should be integrated in the life-skills education programme for pre-primary, primary and secondary school learners. This should include the following:

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- 9.2.1 Providing information on HIV/AIDS and developing the life skills necessary for the prevention of HIV transmission;
  - 9.2.2 Inculcating from an early age onwards basic first-aid principles, including how to deal with bleeding with the necessary safety precautions;
  - 9.2.3 Emphasising the role of drugs, sexual abuse and violence, and sexually transmitted diseases (STDs) in the transmission of HIV, and empowering learners to deal with these situations;
  - 9.2.4 Encouraging learners and students to make use of health care, counselling and support services (including services related to reproductive health care and the prevention and treatment of sexually transmitted diseases) offered by community service organisations and other disciplines;
  - 9.2.5 Teaching learners and students how to behave towards persons with HIV/AIDS, raising awareness on prejudice and stereotypes around HIV/AIDS;
  - 9.2.6 Cultivating an enabling environment and a culture of non-discrimination towards persons with HIV/AIDS; and
  - 9.2.7 Providing information on appropriate prevention and avoidance measures, including abstinence from sexual intercourse and immorality, the use of condoms, faithfulness to one's partner, obtaining prompt medical treatment for sexually transmitted diseases and tuberculosis, avoiding traumatic contact with blood, and the application of universal precautions.
- 9.3 Education and information regarding HIV/AIDS must be given in an accurate and scientific manner and in language and terms that are understandable.
  - 9.4 Parents of learners and students must be informed about all life-skills and HIV/AIDS education offered at the school and institution, the learning content and methodology to be used, as well as values that will be imparted. They should be invited to participate in parental guidance sessions and should be made aware of their role as sexuality educators and imparters of values at home.
  - 9.5 Educators may not have sexual relations with learners or students. Should this happen, the matter has to be handled in terms of the Employment of Educators Act, 1998.
  - 9.6 If learners, students or educators are infected with HIV, they should be informed that they can still lead normal, healthy lives for many years by taking care of their health.

## **DUTIES AND RESPONSIBILITIES OF LEARNERS, STUDENTS, EDUCATORS AND PARENTS**

- 10.1 All learners, students and educators should respect the rights of other learners, students and educators.
- 10.2 The Code of Conduct adopted for learners at a school or for students at an institution should include provisions regarding the unacceptability of behaviour that may create the risk of HIV transmission.
- 10.3 The ultimate responsibility for the behaviour of a learner or a student rests with his or her parents. Parents of all learners and students:
  - 10.3.1 Are expected to require learners or students to observe all rules aimed at preventing behaviour which may create a risk of HIV transmission; and
  - 10.3.2 Are encouraged to take an active interest in acquiring any information or knowledge on HIV/AIDS supplied by the school or institution, and to attend meetings convened for them by the governing body or council.
- 10.4 It is recommended that a learner, student or educator with HIV/AIDS and his or her parent, in the case of learners or students, should consult medical opinion to assess whether the learner, student or educator, owing to his or her condition or conduct, poses a medically recognised significant health risk to others. If such a risk is established, the principal of the school or institution should be informed. The principal of the school or institution must take the necessary steps to ensure the health and safety of other learners, students, educators and staff members.
- 10.5 Educators have a particular duty to ensure that the rights and dignity of all learners, students and educators are respected and protected.

## **REFUSAL TO STUDY WITH OR TEACH A LEARNER OR STUDENT WITH HIV/AIDS, OR TO WORK WITH OR BE TAUGHT BY AN EDUCATOR WITH HIV/AIDS**

- 11.1 Refusal to study with a learner or student, or to work with or be taught by an educator or other staff member with, or perceived to have HIV/AIDS, should be pre-empted by providing accurate and understandable information on HIV/AIDS to all educators, staff members, learners, students and their parents.

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- 11.2 Learners and students who refuse to study with a fellow learner or student or be taught by an educator or educators and staff who refuse to work with a fellow educator or staff member or to teach or interact with a learner or student with or perceived to have HIV/AIDS and are concerned that they themselves will be infected, should be counselled.
  - 11.3 The situation should be resolved by the principal and educators in accordance with the principles contained in this policy, the code of conduct for learners, or the code of professional ethics for educators. Should the matter not be resolved through counselling and mediation, disciplinary steps may be taken.

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### **SCHOOL AND INSTITUTIONAL IMPLEMENTATION PLANS**

- 12.1 Within the terms of its functions under the South African Schools Act, 1996, the Further Education and Training Act, 1998, or any applicable provincial law, the governing body of a school or the council of an institution may develop and adopt its own implementation plan on HIV/AIDS to give operational effect to the national policy.
- 12.2 A provincial education policy for HIV/AIDS, based on the national policy, can serve as a guideline for governing bodies when compiling an implementation plan.
- 12.3 Major roleplayers in the wider school or institution community (for example religious and traditional leaders, representatives of the medical or health care professions or traditional healers) should be involved in developing an implementation plan on HIV/AIDS for the school or institution.
- 12.4 Within the basic principles laid down in this national policy, the school or institution implementation plan on HIV/AIDS should take into account the needs and values of the specific school or institution and the specific communities it serves. Consultation on the school or institution implementation plan could address and attempt to resolve complex questions, such as discretion regarding mandatory sexuality education, or whether condoms need to be made accessible within a school or institution as a preventive measure, and if so under what circumstances.

## HEALTH ADVISORY COMMITTEE

- 13.1 Where community resources make this possible, it is recommended that each school and institution should establish its own Health Advisory Committee as a committee of the governing body or council. Where the establishment of such a committee is not possible, the school or institution should draw on expertise available to it within the education and health systems. The Health Advisory Committee may as far as possible use the assistance of community health workers led by a nurse, or local clinics.
- 13.2 Where it is possible to establish a Health Advisory Committee, the Committee should:
  - 13.2.1 Be set up by the governing body or council and should consist of educators and other staff, representatives of the parents of learners at the school or students at the institution, representatives of the learners or students, and representatives from the medical or health care professions;
  - 13.2.2 Elect its own chairperson who should preferably be a person with knowledge in the field of health care;
  - 13.2.3 Advise the governing body or council on all health matters, including HIV/AIDS;
  - 13.2.4 Be responsible for developing and promoting a school or institution plan of implementation on HIV/AIDS and review the plan from time to time, especially as new scientific knowledge about HIV/AIDS becomes available; and
  - 13.2.5 Be consulted on the provisions relating to the prevention of HIV transmission in the Code of Conduct.

## IMPLEMENTATION OF THIS NATIONAL POLICY ON HIV/AIDS

- 14.1 The Director-General of Education and the Heads of provincial departments of education are responsible for the implementation of this policy, in accordance with their responsibilities in terms of the Constitution of the Republic of South Africa, 1996, and any applicable law. Every education department must designate an HIV/AIDS Programme Manager and a working group to communicate the policy to all staff, to implement, monitor and evaluate the Department's HIV/AIDS programme, to advise management regarding programme implementation and progress, and to create a supportive and non-discriminatory environment.

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- 14.2 The principal or the head of a hostel is responsible for the practical implementation of this policy at school, institutional or hostel level, and for maintaining an adequate standard of safety according to this policy.
  - 14.3 It is recommended that a school governing body or the council of an institution should take all reasonable measures within its means to supplement the resources supplied by the State in order to ensure the availability at the school or institution of adequate barriers (even in the form of less sophisticated material) to prevent contact with blood or body fluids.
  - 14.4 Strict adherence to universal precautions under all circumstances (including play and sports activities) is advised, as the State will be liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school or institution.

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## **REGULAR REVIEW**

This policy will be reviewed regularly and adapted to changed circumstances.

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## **APPLICATION**

- 16.1 This policy applies to public schools which enroll learners in one or more grades between grade zero and grade twelve, to further education and training institutions, and to educators.
- 16.2 Copies of this policy must be made available to independent schools registered with the provincial departments of education.

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## **INTERPRETATION**

In all instances, this policy should be interpreted to ensure respect for the rights of learners, students and educators with HIV/AIDS, as well as other learners, students, educators and members of the school and institution communities.

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## **WHERE THIS POLICY MAY BE OBTAINED**

This policy may be obtained from:

The Director: Communication, Department of Education,  
Private Bag X895, Pretoria, 0001

Tel. No. (012) 312-5271.

This policy is also available on the Internet at the following web site:

<http://education.pwv.gov.za> 

# Amendment of Public Service Regulations, 2001

The Minister for the Public Service and Administration, under section 41 of the *Public Service Act, 1994* (promulgated under Proclamation No. 103 of 1994), has amended the *Public Service Regulations, 2001* (promulgated under Government Notice No. R. 1 of 5 January 2001), as set out in the Schedule.



## SCHEDULE

Part VI of Chapter I is hereby amended -

(a)

by the substitution for regulation VI A of the following regulation:

### A. PRINCIPLES

The working environment should support effective and efficient service delivery while, as far as reasonably possible, taking employees' personal circumstances, including disability, HIV (Human Immunodeficiency Virus, hereinafter referred to as HIV) and AIDS (Acquired Immune Deficiency Syndrome, hereinafter referred to as AIDS) and other health conditions into account.

(b)

by the insertion after regulation IV D of the following regulations:

### E. HIV/AIDS AND RELATED DISEASES

#### E.1 Occupational exposure

A head of department shall -

- (a) identify units or employees within the department that, due to the nature of their work, are at high risk of contracting HIV and other related diseases, and take reasonable steps to reduce the risk of occupational exposure to HIV and such diseases;
- (b) take all reasonable steps to facilitate timely access to voluntary counselling and testing and post-exposure prophylaxis in line with prevailing guidelines and protocols for employees who have been exposed to HIV as a result of an occupational incident; and
- (c) if the testing referred to in paragraph (b) indicates that an employee has become HIV-positive as a result of the occupational incident, ensure that the employee is assisted to apply for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993).

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## ***E.2. Non-discrimination***

A head of department shall –

- (a) ensure that no employee or prospective employee is unfairly discriminated against on the basis of her or his HIV status, or perceived HIV status, in any employment policy or practice; and
- (b) take appropriate measures to actively promote non-discrimination and to protect HIV-positive employees and employees perceived to be HIV-positive from discrimination.

## ***E.3 HIV testing***

A head of department shall –

- (a) encourage voluntary counselling and testing for HIV and other related health conditions and, wherever possible, facilitate access to such services for employees in the department; and
- (b) ensure that no employee or prospective employee of the department is required to take a HIV test unless the Labour Court has declared such testing as justifiable in terms of the Employment Equity Act, 1998 (Act No. 55 of 1998).

## ***E.4 Confidentiality and disclosure***

All employees shall treat information on an employee's HIV status as confidential and shall not disclose that information to any other person without the employee's written consent.

## ***E.5 Health promotion programme***

A head of department shall –

- (a) introduce appropriate education, awareness and prevention programmes on HIV/AIDS and other sexually transmitted infections for the employees in the department and, where possible, their families, and as far as possible, integrate those programmes with programmes that promote the health and well-being of employees;
- (b) Corrected: GNR 924-02-07-12-GG23594
- (c) designate a member of the SMS with adequate skills, seniority and support to implement the provisions contained in regulation VI E within the department, and ensure that the member so designated is held accountable by means of her or his performance agreement for the implementation of the provisions;

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- (d) allocate adequate human and financial resources to implement the provisions of regulation VI E, and, where appropriate, form partnerships with other departments, organisations and individuals who are able to assist with health promotion programmes;
  - (e) establish an HIV/AIDS committee for the department with adequate representation and support from all relevant stakeholders, including trade union representatives, to facilitate the effectiveness of the provisions of regulation VI E; and
  - (f) ensure that the health promotion programme includes an effective internal communication strategy.

### ***F. MONITORING AND EVALUATION***

A head of department shall introduce appropriate measures for monitoring and evaluating the impact of the health promotion programme among the employees of the department.

